



COMMONWEALTH OF PUERTO RICO / OFFICE OF THE GOVERNOR

Environmental
Quality Board

October 4, 1993

Mr. William J. Muszynski, P.E.
Regional Administrator
EPA - Region II
Jacob K. Javits Federal Building
26 Federal Plaza
New York, N.Y. 10278

Dear Mr. Muszynski:

The Environmental Quality Board (EQB) of the Commonwealth of Puerto Rico in accordance with Section 4005 (c) of Subtitle D of the Resource Conservation and Recovery Act, hereby submits the attached documents to obtain an adequacy determination for the delegation of the Non-Hazardous Solid Waste Program to ensure compliance with 40 C.F.R. Part 258 Standards pertaining to municipal solid waste landfills. With this submittal EQB understands that it has complied with all the requirements to obtain the above mentioned delegation.

Should you require further information concerning these documents, please contact me at 767-8056.

Sincerely,



Hector Russe Martinez
Chairman

COMMONWEALTH OF PUERTO RICO

ADEQUACY APPLICATION

**NON-HAZARDOUS SOLID WASTE MANAGEMENT
REGULATION PERMIT PROGRAM**

**EPA REGION II
OCTOBER 9, 1993**

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AIR & WASTE
MGT. DIV.

COMMONWEALTH OF PUERTO RICO

ADEQUACY APPLICATION

NON-HAZARDOUS SOLID WASTE MANAGEMENT
REGULATION PERMIT PROGRAM

PROGRAM DESCRIPTION: PART 4
OCTOBER 22, 1993 AMENDMENT

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[Commonwealth of Puerto Rico -- Office of the Attorney General LETTERHEAD]

September [], 1993

William J. Muszynski, Regional Administrator
Region II, Environmental Protection Agency
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278

Dear Mr. Muszynski:

I hereby certify pursuant to my authority as Attorney General of the Commonwealth of Puerto Rico that in my opinion the laws and regulations of the Commonwealth of Puerto Rico referenced in its application for a determination of Non-Hazardous Solid Waste Management permit program adequacy are contained in statutes or regulations lawfully adopted at the time this Statement is signed and will be effective by the time the program is determined to be adequate. Guidance provided [if any] is contained in (Title(s) of guidance documents) and can be used to develop enforceable permit conditions.

I have reviewed the enclosed application materials and have found all citations to the laws and regulations of the Commonwealth of Puerto Rico contained therein to be adequate. I have concluded that the permit program, as described in the application and pursuant to the Puerto Rico laws and regulations cited therein, is adequate to meet the intent and standards of 40 C.F.R. Part 258.

As described in Part 4.7 of this application, the interested public may intervene in any civil enforcement proceeding brought by EQB to enforce the program described in this application. I hereby certify that the Commonwealth of Puerto Rico Office of Attorney General will not oppose citizen intervention in any action where such citizens have a cognizable interest.

Very truly yours,

COMMONWEALTH OF PUERTO RICO

Office of the Attorney General

SAN JUAN, PUERTO RICO 00902

ADDRESS COMMUNICATIONS TO
THE ATTORNEY GENERAL

February 11, 1994

VIA TELECOPY, COPY BY MAIL

Robert Hazen, Esq.
U.S.E.P.A. Region II
26 Federal Plaza
New York, New York 10278

Re: Attorney General Statement
Non-Hazardous Solid Waste
Permit Program Application

Dear Mr. Hazen:

This is to confirm our conversation of February 9, 1994, in which you stated that EPA requests the Attorney General to state he will not oppose citizen intervention in cases arising under 33 CFR Section 258 Subpart C. You explained that your main concern, and the reason for such request is that since the Non-Hazardous Solid Waste Permit Program will be soon delegated to Puerto Rico's Environmental Quality Board, EPA wants to assure by all means that citizens will be allowed to intervene in the aforementioned cases.

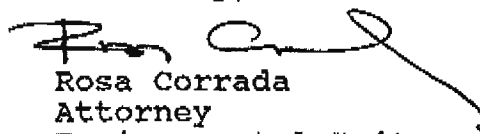
As I explained to you, citizen intervention in Puerto Rico is determined by Rule 21.1 of the Local Rules of Civil Procedure. At your request I am enclosing the cases cited in the annotation of the aforementioned rule.

As I further mentioned, the Attorney General represents all governmental entities that could be involved in a case related to the non-hazardous solid waste permit program and regulations. There is a varied scope of situations which could give rise to an action of this nature, and the development of such actions once initiated is unpredictable. We consider it inappropriate to make the statement you require because it would beforehand impair the effectiveness of our legal representation. The Department of Justice has an inescapable duty to provide a legal representation of excellence. Inherent to this duty is the freedom of choice to do whatever best serves the interests of the Commonwealth of Puerto Rico and its entities. As we hope you understand this is something we are not able to negotiate.

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I expect the cases hereby furnished will show you that in Puerto Rico, intervention in any civil action is granted whenever citizens demonstrate they have a legitimate interest. If on the other hand, you still want a statement from the Attorney General on the subject of intervention, contact me as soon as possible so we can discuss this matter and find a language that suits us both. As always I can be reached at (809) 721-5626.

Sincerely,



Rosa Corrada
Attorney
Environmental Unit
Department of Justice

enclosures

3. INTRODUCTION

The Puerto Rico Environmental Quality Board ("EQB") promulgated the Non-Hazardous Solid Waste Management Regulation (the "Regulation") pursuant to the Puerto Rico Public Policy Environmental Act, No. 9 of June 18, 1970 (12 LPRA 1122), as amended ("PPEA") (Attachment 3). *See* PPEA § 11(21) (authorizing EQB to adopt and amend rules concerning the disposal of solid waste). The Regulation repeals the existing provisions of the Regulation for the Control of Hazardous and Non-Hazardous Solid Waste of the Environmental Quality Board, as amended, that are applicable to non-hazardous solid waste.¹ The Regulation sets forth new requirements for the handling, storage, transportation and disposal of non-hazardous solid waste, and for the administration and monitoring of activities related to non-hazardous solid waste facilities, including sanitary landfill facilities ("facilities" or "SLFs").²

The Regulation establishes a permit program for the design, construction, operation, closure and post-closure of SLFs. The program will meet the minimum criteria established under Section 4003 of the Resource Conservation and Recovery Act ("RCRA"), as amended, which apply to all municipal dumps or sanitary landfills. These minimum federal criteria aim to protect human health and the environment and prevent illegal and inadequate solid waste disposal. In addition, the program will comply with the relevant requirements of the Clean Water Act ("CWA"), as amended, which applies to all dumps or sanitary landfills used for sludge disposal.

In accordance with RCRA Subtitle D, Section 4005(c), this adequacy application package has been submitted for full approval to Region II of the United States Environmental Protection Agency (EPA) for review to determine whether Puerto Rico's program adequately assures compliance with 40 C.F.R. Part 258 -- the minimum federal criteria. To facilitate Region II's review process, this package has been organized as described in the State/Tribal Implementation Rule Manual. Sections 4.1 through 4.7 of this application demonstrate EQB's capability to effectively implement and enforce this program through compliance with the criteria contained in the draft proposed Part 239, the State/Tribe Implementation Rule ("STIR"). These sections largely track the annotated outline provided in the STIR Manual. In addition, section 4.8 incorporates "side-by-side" worksheets that demonstrate the comparability of Puerto Rico's program with the Part 258 criteria.

¹ *See* Commonwealth of Puerto Rico Non-Hazardous Solid Waste Management Regulation (Oct. 14, 1980), as amended (Attachment 15); Solid Waste Authority Act No. 70, June 23, 1978, as amended.

² Under EQB's Rule 103, a "sanitary landfill facility" ("SLF") is equivalent to the federal definition of a municipal solid waste disposal facility. The terms "SLF" and "facility" are used interchangeably throughout this application.

4. PUERTO RICO'S PROGRAM DESCRIPTION

4.1 Jurisdiction And Responsibilities § 239.4(a)

Pursuant to its authority established at PPEA § 11, EQB will have exclusive responsibility for implementing and enforcing the Non-Hazardous Solid Waste Management Regulation. As provided in the Regulation and described in this application, EQB is responsible for permitting existing and new non-hazardous solid waste facilities in accordance with requirements that adequately ensure compliance with the 40 C.F.R. Part 258 federal criteria. In addition, EQB will monitor facility compliance with, and enforce, the Regulation.

Within EQB, the Non-Hazardous Bureau (the "Bureau") of the Land Pollution Control Area office will provide primary permitting, inspection, and enforcement support for the program. The Bureau will be the primary liaison between EPA and EQB on issues relating to the Part 258 criteria. (See Attachments 4 and 5). As Attachment 5 demonstrates, the Bureau employs 5 technicians who have primary inspection and permitting responsibility under the program. They are supported by two Bureau sections: the Surveillance Inspection Section and the Permitting Section. These sections will be supported by enforcement attorneys from EQB's Legal Division who, in coordination with the director of the Bureau, will be responsible for pursuing civil and administrative enforcement actions against violating facilities. See Parts 4.3 and 4.4 for a more complete description of program staffing and the permitting process. The Bureau will also be supported by EQB's three regional offices in Arecibo, Mayaguez and Ponce who will provide inspection and technical support to the Bureau.

Pursuant to its authority established under section 1305 of the Puerto Rico Solid Waste Management Authority Act, Act. No. 70, June 23, 1978, as amended (Attachment 13), the Puerto Rico Solid Waste Management Authority ("SWMA") will facilitate the administration of the new regulatory program by providing technical and financial assistance to the Commonwealth's SLFs. SWMA will assist those facilities scheduled for closure as of October 9, 1993 and those that will continue to operate under the new Regulation. SWMA technicians will inspect the SLFs on the average of 2 to 3 times per year, and more frequently where operational problems exist. Reports prepared by SWMA technicians are regularly made available to EQB and will be used by the Bureau to establish inspection and enforcement priorities. This coordination between EQB and SWMA will facilitate EQB's implementation and enforcement.

4.2 Size Of The Regulated Community - § 239.4(d)

A total of 61 SLFs in the Commonwealth received municipal solid waste on or after October 1, 1991. This number includes those units that receive hazardous household waste or small quantity generator hazardous waste. This figure does not include land application units, surface impoundments, injection wells or waste piles, as those terms are defined in 12 C.F.R. Part 257.2. A total of 30 SLFs will continue to receive waste after October 9, 1993 (29 municipal and 1 private). These facilities will be permitted under the Regulation and therefore subject to all of the Part 258 technical requirements. Of these 30 facilities, approximately 19 are scheduled for eventual closure during a 5 to 7 year transition period. The SWMA will help to

coordinate and plan this transition. After this transition is complete, approximately 11 regional facilities will continue to serve the Commonwealth.

Thirty-one non-hazardous solid waste landfills have been scheduled for closure prior to October 9, 1993 and will therefore only be required to comply with the Regulation's final cover requirements. Rule 202; Rule 801. These facilities have been issued EQB "cease and desist" and "to do" orders pursuant to PPEA § 11(22). These facilities must develop and submit a Work Plan for closure prior to October 9, 1993. The Work Plan must incorporate all Part 258.60(a) final cover requirements pursuant to Rule 801 of the Regulation. EQB inspectors will be dispatched to each facility scheduled for closure to ensure that wastes are not received after October 9, 1993. Facilities that fail to comply with the final cover requirements will be subject to all of the requirements applicable to SLFs established in the Regulation.

4.3 Staff Resources for the Permit Program Implementation § 239.4(e)

The Bureau office is organized as shown in Attachment 4 and is headed by the Director of the Land Pollution Control Area office. As Attachment 5 reflects, the Bureau is staffed by 1 supervisor and 4 technicians who will spend 100% of their time on Regulatory permitting and inspection responsibilities. (5 full time person years (FTEs). In addition, the Bureau's Surveillance Inspection Section will be staffed by 9 individuals: 1 supervisor and 8 inspection technicians. These inspectors will dedicate approximately one-third of their time to facility inspection and enforcement duties under the Regulation. (Approximately 3 FTEs). In addition, the Bureau will be supported by 7 inspectors in the Arecibo Regional office, 5 inspectors in the Mayaguez Regional office, and 6 inspectors in the Ponce Regional office, all of whom will dedicate 100% of their time to implementation of the Regulation. (18 FTEs). All inspectors will receive approximately 40 hours of training regarding the new Regulation. Inspectors currently have an average of 5 years of experience and have recorded an average of 80 hours of general training. Inspection scheduling and staffing will be coordinated between the Bureau and the EQB regional offices. The SWMA, which will also conduct site inspections and make inspection reports available to EQB, currently employs 3 inspectors and 1 geologist who will provide technical support to the facilities.

The Bureau's Permitting Section is staffed by 8 individuals: 1 supervisor and 7 permitting technicians. These technicians will dedicate approximately one-third of their time to permitting and other regulatory implementation responsibilities. (Approximately 3 FTEs). A total of 4 attorney's from EQB's Legal Division will be assigned to the Bureau to assist in the regulatory enforcement process. (Approximately 4 FTEs).

4.4 Permitting Requirements §§ 239.4(b) and 239.6

4.4.1 Explanation of Permitting Procedures § 239.4(b)

EQB will ensure that all existing and new non-hazardous solid waste landfills are permitted in compliance with Part 258 standards though implementation of the Regulation's permitting requirements and procedures. Construction and operating permits will be issued through a five-step process. First, the permit application is submitted to the EQB Office of Permit Filing for a determination of compliance with PPEA Section 4(c)(preparation of

Environmental Impact Statement) (Rule 1002(11)). Second, the application is referred to the Bureau's Permitting Section for technical evaluation and review of completeness. At this stage, the application may be returned to the applicant to remedy completeness and other problems. Third, the Permitting Section refers the application, along with a recommendation of whether to grant or deny a permit, to the Director of the Bureau. The director reviews the application for a tentative permit determination. If the director finds the application acceptable, he or she prepares a memorandum to EQB's Governing Board, a draft permit and a fact sheet. Rule 1010(5). Fourth, public notice and comment is conducted pursuant to the procedures described in Section 4.4.4. Rules 206, 208, and 1010(8),(9),(10) and (11). Finally, the Governing Board issues a final permit decision. Rule 1010(5)(E).

The approximately 25 existing landfills that will not be in compliance with the Part 258 criteria by October 9, 1993 will not be granted operating permits unless they can demonstrate an ability to comply with a compliance plan developed by the facility pursuant to an EQB order "to do." See PPEA § 11(22). A compliance plan establishes a schedule for achieving compliance with the Part 258 standards, as established in the Regulation. Rule 1007. EQB will not approve compliance plans unless they ensure full compliance with the Regulation "as expeditiously as practicable" and demonstrate "maximum practicable protection for human health and the environment." The Bureau currently expects that most facilities will achieve full compliance with the Regulation within 1 year of promulgation. Most existing facilities that will receive waste on and after October 9, 1993 have already submitted compliance plans and permit applications pursuant to Rule 1003.³ The review process is ongoing.

4.4.2 Permit Requirements for New or Modified Non-Hazardous Solid Waste Facilities § 239.6(a)(1)

Rules 1002 and 1003 of the Regulation provide that prior to construction and operation, all new or modified⁴ non-hazardous solid waste facilities⁵ must have permits incorporating the conditions identified in 40 C.F.R. § 239.6(c). Construction and operation activities at new and modified facilities must be separately permitted. Rule 1002(1) states that "[n]o person shall construct or cause the construction of a new or modified non-hazardous solid waste facility without first obtaining a construction permit from the Board." Among other things, EQB will

³ EQB currently estimates that 4 to 5 facilities, including the planned new facilities at San German, Vieques and Cabo Rojo will be in compliance with the Regulation as of October 9 and will not be required to develop a compliance plan.

⁴ "Modification" is defined by Rule 103 of the Regulation as "[a]ny physical change to a solid waste facility or change in the method of operation of such a facility that results in an increase in the amount or type of solid waste that is generated, transported, stored, treated, recovered, disposed of, or otherwise handled." This definition is used in a manner analogous to that of "lateral expansion" under the federal rules.

⁵ Under the Regulation, the term "non-hazardous solid waste facility" encompasses the term "sanitary landfill facility" -- the functional equivalent of "municipal solid waste landfill" under 40 C.F.R. Part 258.

not issue a construction permit unless the applicant can show that the new or modified facility "will be capable of operating in compliance with all applicable rules and regulations[,]" including the Regulation which, as Section 4.8 below demonstrates, adequately ensures compliance with 40 C.F.R. Part 258. Rule 1002(4)(A).

Rule 1003(1) prohibits the operation of new, existing or modified non-hazardous solid waste facilities without an operating permit. As with construction permits, an operating permit applicant must demonstrate that the facility "is and can remain in compliance with all requirements of [the Regulation] or with an approved compliance plan." Rule 1003(4)(A).

As discussed below, compliance plans must be prepared and implemented by existing facilities that are in violation of any Regulatory requirements. Because compliance plans are only applicable to existing facilities, a prospective operator of a new facility must demonstrate current and prospective compliance with all requirements. Thus, the Regulation adequately ensures that new solid waste facilities will be permitted in compliance with the Part 258 standards prior to construction and operation.

4.4.3 Permit Requirements for Existing Non-Hazardous Solid Waste Facilities **§ 239.6(a)(2)**

Rule 1003 provides that prior to operation, all existing non-hazardous solid waste facilities must have an operating permit incorporating the conditions identified in 40 C.F.R. § 239.6(c). As noted in Section 4.4.2, an operating permit applicant must demonstrate that the facility "is and can remain in compliance with all requirements of [the Regulation] or with an approved compliance plan." Rule 1003(4)(A).

EQB will not issue operating permits to facilities in violation of any of the Part 258 standards unless the facility can demonstrate an ability to remain in compliance with an approved compliance plan. Rule 1003(4). Compliance plans set forth a road map for attaining compliance with each requirement of the Regulation that is being violated by establishing specific increments of progress and a specific timetable for attainment of each increment. Rule 1007(3). Through this ongoing process, EQB will ensure that existing landfills have permits incorporating the Part 258 standards and will be on an expedited timetable for achieving compliance with these standards.

4.4.4 Public Review and Comment of Permit Documents § 239.6(a)(3)

PPEA § 11(34) and Rules 206, 208 and 1010 provide that, unless deemed by EQB to be confidential, all non-hazardous solid waste facility permit documents used for permit determinations will be available for public review and comment. Specifically, Rule 206 states that "[a]ny information received by [EQB] will be available to the public for inspection and copying up to the point and in the manner provided by the regulation approved therefore." Rule 1010(5)(E) requires all "background documents" used to prepare draft permits be made available to the public. EQB must publish a notice whenever a draft construction or operating permit has

been prepared or a public hearing date has been set. Rule 1010(8)(A). This notice must be published in at least two newspapers of general circulation in Puerto Rico. Rule 208. Such notice must include the name, address and telephone number of a person whom interested persons may contact for further information and the location of background documents and the dates and times on which they will be available for public inspection. Rule 1010(8)(D). In addition, all interested persons must be mailed a copy of: 1) a "fact sheet"⁶ (Rule 1010(7)), or "statement of grounds"⁷ (Rule 1010(6)); 2) the permit application, and 3) the draft permit. Rule 1010(8)(E).

Rules 208 and 1010(8)(B) require that public notice of a draft permit allow at least 45 days for public comment. During the comment period, any interested person may submit written comments and/or request a public hearing. Rule 1010(9). EQB must hold a public hearing if it finds, on the basis of public requests, "a significant degree of public interest in a draft permit." Rule 1010(10)(A). EQB may also hold a public hearing on a permit application when requested by an interested person or when the Board feels a hearing will assist it in assessing the permit application. Rule 208. *See* PPEA § 11 (granting EQB authorization to hold public hearings). If EQB holds a public hearing, it must provide at least 45 days of public notice of the hearing. Hearings will be held pursuant to the procedures established under the Rules of Administrative Procedure for Hearings in the EQB of Puerto Rico, June 15, 1988. (Attachment 14).

4.4.5 Public Notice of Final Permit Determinations § 239.6(a)(4)

Rules 208 and 1010 ensure that the public will be notified of final non-hazardous solid waste facility permit determinations. If EQB holds a public hearing regarding a draft permit, EQB must draft a resolution detailing EQB's final decision (if any), make the resolution available to the public and mail the resolution to the hearing participants within 45 days of the date of the final decision. Rule 208(3). Furthermore, as described below, public awareness of the final permit decision is achieved through Rule 1010(11) of the Regulation, which requires EQB to issue a public response to public comments that identifies any changes between the draft permit and the final permit. EQB must issue a final permit determination in accordance with the Regulation on Administrative Hearings Before the EQB. Rule 1010(5)(E). *See* Rules of Administrative Procedure for Hearings in the Environmental Quality Board, § 25.6. (Attachment 14).

⁶ EQB must prepare a "fact sheet" for every draft permit that briefly indicates the principal facts in the draft permit and any other factual, legal, methodological, and policy issues considered in preparing the draft permit. Rule 1010(7).

⁷ If EQB does not prepare a "fact sheet," EQB must prepare a "statement of grounds" briefly describing grounds upon which the conditions and requirements established in the draft permit are based and their *raison d'être*, or in case of notices or intent to deny or terminate, the reasons for such tentative decision. Rule 1010(6).

4.4.6 Procedures to Ensure Consideration of Public Comments § 239.6(b)

Rule 1010 provides that EQB must respond to public comments concerning draft permitting determinations . Before issuing a final decision, EQB must issue a response to comments. Rule 1010(5)(E), 1010(9) and 1010(11). Specifically, EQB must make available to the public a response that: 1) specifies how the final permit differs from the draft permit and the reasons for any changes (if any) and; 2) briefly describes and responds to all significant comments raised during the comment period or public hearing. Rule 1010(11).

4.4.7 Imposing the Regulation § 239.6(c)

The PPEA provides EQB with the authority to promulgate the non-Hazardous Solid Waste Management Regulation which, as the enclosed side-by-side comparison demonstrates (Attachment 1), adequately ensures compliance with 40 C.F.R. Part 258. Among other things, the PPEA vests EQB with the power to promulgate regulations regarding inspections and permits for installation and operating of facilities for the rescue, processing and final disposal of solid waste products, PPEA § 11(34)(c), and develop programs for the disposal of solid waste products. PPEA § 11(32).

4.4.8 Collecting Information Necessary to Issue Permits § 239.6(d)

The PPEA provides EQB with authority to collect all information necessary to issue permits that are adequate to ensure compliance with the Regulation. In particular, PPEA § 11(23)(b) empowers EQB to "require any person or entity subject to its jurisdiction to file with it the required reports for the implementation of this title." EQB has exercised this authority, in part, through promulgation of Rules 1002(3) and 1003(3). These rules specify the informational requirements for construction and operation permit applications. In addition, as part of the application, all permit applicants must submit the form "Solicitud de Aprobacion papa Facilidades de Procesamiento y/o Disposicion Final de Desperdicios Solidos," No. DS-2 (10/4/91) (Attachment 6). These information requirements ensure that EQB will receive all information necessary to issue site-specific permits that ensure compliance with 40 C.F.R. Part 258, as adopted by the Regulation.

4.5 Compliance Monitoring § 239.7

4.5.1 Obtaining Information Necessary to Determine Compliance § 239.7(a)(1)

PPEA § 11(5), (23) (26) and Rules 204, 205, 503, 1002 and 1003 of the Regulation provide EQB with authority to obtain any and all information, including records and reports, from an owner or operator of a non-hazardous solid waste facility necessary to determine whether the owner/operator is in compliance with the Regulation. Specifically, Rule 503 requires owners or operators of any solid waste facility to monitor its activities and keep daily operational records. Rule 1003(5)(I). Rule 504 requires facilities to maintain an operating log

containing at a minimum the information required to be kept under the operating permit. These logs must be summarized and provided to EQB quarterly. Rule 503(1)(B)(2). Annual reports of facility operations must also be submitted to the EQB. Rule 1003(5)(I).

In addition, Rule 1002(5)(C) (relating to construction permits) requires the permittee to file, upon request of EQB, any information needed to determine whether the permittee is complying with the permit. As a permit condition, permittees must allow EQB or its authorized representative to enter and inspect the facility to verify compliance. Rule 1003 relates to operation permits and imposes Rule 1002(5) requirements on operation permittees and also requires permittees to maintain a monitoring program, as required by Rule 503, and submit to EQB monitoring reports and annual reports of facility operations to EQB. Rule 1003(5). Permittees must also submit periodic reports of compliance status.

The Regulation also provides EQB with the ability to collect information on demand. Rule 204(2) permits EQB officers, without prior notice, to request access to inspect any report or document required by EQB or the Regulation and to request delivery of copies of such documents within 48 hours. Rule 205 provides that if an EQB officer is denied access to any location subject to EQB's jurisdiction, EQB may issue an Administrative Order or obtain a Court Order pursuant to its authority at Section 11(26) of the PPEA. These statutory procedures require the EQB representative to present an affidavit to a Judge of the First Instance stating the intention and requesting permission to enter the premises. The judge must then issue an order authorizing the EQB representative to enter the premises. The representative may gain access by showing a copy of the affidavit and court order. Furthermore, Rule 503(6) empowers EQB to order a facility to conduct sampling or testing in accordance with the Regulation. EQB therefore has the authority to collect any and all necessary information for compliance assessment. *See also* PPEA §§ 11(22).

4.5.2 Conducting Monitoring and Testing to Ensure Compliance § 239.7(a)(2)

*PPEA § 11(26) and Rules 204, 205, 503 and 1003 provide EQB with authority to conduct monitoring, inspections or testing to ensure that facilities are in compliance with the Regulation. Specifically, PPEA § 11(26) authorizes EQB to enter and examine the premises, equipment, facilities, and documents of any premises subject to its jurisdiction to investigate and/or inspect the facility's environmental condition. More specifically, without prior notice, EQB officers may ask permission to enter any premises where a non-hazardous solid waste unit⁸ is located or where any unit believed to be a non-hazardous solid waste facility exists, request for inspection equipment, testing and weighing methods, and request permission to inspect and obtain samples of any material could have been affected or may have come in contact with solid wastes. Rule 204(1), (3) and (4). If an EQB officer is denied access, EQB may issue an Administrative Order or obtain a Court Order pursuant to the PPEA, as described above. Rule 205; *see also* PPEA § 11(22).*

⁸ A solid waste facility, which may be a sanitary landfill facility, may have one or more operational "units" for handling solid waste. Rule 103.

Furthermore, Rule 503(5) requires owners or operators of solid waste facilities to provide inspectors with whatever equipment may be necessary for EQB to obtain test samples. EQB may also require the owner or operator of a solid waste facility to conduct, at its own expense, sampling or testing in accordance with the Regulation. Rule 503(6). Rule 1003(7) also authorizes EQB to require a permittee to conduct performance tests monitored by EQB, or to conduct such tests itself.

4.5.3 Entering Any Site or Premise § 239.7(a)(3)

PPEA § 11(26) and Rules 204 and 205 provide EQB with authority to enter any site or premises subject to the permit program or in which records relevant to the operation of regulated facilities or activities are kept. As described above, PPEA §11(26) authorizes EQB to enter and examine the premises, equipment, facilities, and documents of any "individual, entity, firm, agency or governmental instrumentality" subject to its jurisdiction to investigate and/or inspect the facility's environmental condition. This authority therefore extends beyond the facility itself and to any area in which documents relating to the EQB-permitted facility are kept.

Without prior notice, EQB officers may ask permission to enter any premises where a non-hazardous solid waste unit is located or where any unit believed to be a non-hazardous solid waste facility is located and request access to inspect any documentation required by EQB or the Regulation. Rule 204(1) and (2). If an EQB officer is denied access or is prevented from performing an inspection, EQB may issue an Administrative Order or obtain a Court Order pursuant to the PPEA, as described in 4.5.1 above. Rule 205; *see also* PPEA §§ 11(22) and 11(26).

4.5.4 Inspections Adequate to Determine Compliance § 239.7(b)

EQB's compliance monitoring program will ensure that inspections of permitted facilities are adequate to determine compliance with the Regulation. EQB inspections will be conducted by inspectors trained regarding the technical requirements of the new Regulation. These inspectors will use detailed, Regulation-specific checklists to conduct technical inspections. (*See Attachment 7*). The frequency of these inspections will depend on several factors, including the compliance history of the facility and the receipt of citizen complaints. On average, the Bureau plans to conduct inspections at least semi-annually, pursuant to its authority established at Rule 204. Facilities will generally be conducted on a random basis, although priorities will also be based on the perceived compliance status of the facility.

The scope of inspections will be guided in large part by the checklist (*Attachment 7*) that inspectors have been trained to follow and complete. In general, inspectors will assess compliance issues such as cover requirements, equipment availability and accuracy, and soil conditions, review logbooks kept by the facility, conduct independent analyses and tests, and engage in other necessary activities necessary to ensure facility compliance. All EQB inspection analyses are conducted pursuant to EPA's Test Methods for Evaluating Solid Waste, Physical/Chemical Methods SW-846 Manual and other EPA-approved QA/QC procedures.

As described in 4.5.1 above, the regulatory program also ensures compliance by requiring permitted facilities to establish internal monitoring programs. Rule 1003(5) provides that as a condition of the operating permit, all permittees must maintain an internal monitoring program, as described in Rule 503. Under this program, the permittee must: 1) obtain representative samples; 2) maintain complete records of all monitoring activities; and 3) submit monitoring reports to EQB. Monitoring records must be retained for three (3) years. However, ground-water monitoring records must be retained for the life of the facility. *See also* Rule 1003(7) (authorizing EQB to require permittees to conduct performance testing).

4.5.5 Verifying the Accuracy of Owner/Operator Submitted Information § 239.7(c)(1)

Rules 204 and 503(2), (3) and (5), together with EQB's Form QAD-01 (Attachment 8) provide mechanisms to verify the accuracy of information submitted by owners/operators of non-hazardous solid waste facilities. Through detailed facility and record inspections, EQB will verify that compliance data and other information submitted by permittees is accurate. Rule 204. Inspectors will review facility compliance monitoring procedures and conduct sampling, testing and monitoring as indicated on the inspection checklist. These procedures will enable EQB to verify that the compliance information obtained from permittees is adequate and accurate.

The accuracy of data will also be verified through the use of Form No. QAD-01, "Information to be submitted to the Environmental Quality Board Land Pollution Control Area for the Sampling and Analysis Activities (Attachment 8). This form require permittees to submit detailed information explaining facility sampling methods, QA/QC procedures, chain of custody procedures, analytical activities, and sample verification requirements. SLF compliance with the QA/QC procedures required under Rule 503(2) and (3) will help to ensure that the information submitted on Form QAD-01 is accurate. These provisions require facilities to follow EPA or ASTM-approved QA/QC testing methods and to certify the accuracy of records and reports submitted to EQB. All information will be reviewed by trained technicians in the Bureau's Surveillance Inspection Section who are the same individuals responsible for conducting facility inspections. Inspectors will therefore be able to verify any questionable data through repeat inspections of the facility and its records. For example, Rule 503(5) authorizes EQB to conduct its own sampling upon request. *See also* 1003(7).

4.5.6 Verifying the Adequacy of Owner/Operator Methods for Developing Information § 239.7(c)(2)

Rule 503 and the use of Form QAD-01 will ensure EQB's ability to verify the adequacy of methods (including sampling) used by owners/operators of non-hazardous solid waste facilities to develop information submitted to EQB. Rule 503(2) of the Regulation requires permittees to conduct all monitoring tests in accordance with test methods and procedures specified in 40 C.F.R. Parts 141, 257 or 258. Facilities must use ASTM specifications where relevant methods are not specified in the C.F.R. Rule 503(2). The accuracy of all tests and calculations must be certified by a licensed engineer and all chemical analyses must be certified by a licensed chemist. In addition, owners or operators of permitted facilities must swear in writing to the truthfulness,

correctness and completeness of all records and reports submitted to EQB. Rule 503(3). As stated above, Form QAD-01 (Attachment 8) requires permittees to describe and document the chain of custody and QA/QC methods being used at the facility. EQB training officers will train EQB inspectors to ensure that inspections accurately determine whether permitted facilities are implementing the appropriate QA/QC procedures and are gathering accurate data.

4.5.7 Producing Admissible Evidence § 239.7(c)(3)

Pursuant to Rules 204 and 205 and PPEA § 11(2), EQB is capable of producing evidence admissible in an enforcement proceeding. As discussed above, Rules 204 and 205 provide EQB with the authority to inspect premises, equipment, samples and methods and obtain copies of relevant documentation and samples of any material that could have been affected or may have come in contact with solid wastes. Pursuant to their authority under PPEA § 11(2), EQB inspectors will use the "EQB Organic/Inorganic Traffic Report and Chain of Custody Record" form to collect data and record information (Attachments 9 and 10).⁹ The use of these forms, along with consistent internal EQB procedures that require inspectors to draft detailed inspection reports for each inspection and to testify in their inspection procedures in all enforcement actions, will ensure the admissibility in court of all data collected by EQB inspectors.

4.5.8 Receiving and Ensuring Consideration of Information from the Public § 239.7(c)(4)

EQB has established a comprehensive system for receiving, and responding to public complaints concerning the compliance status of EQB-permitted facilities. These procedures are used to provide the public with an effective means of participating in the regulatory enforcement process. The EQB Land Pollution Control Area's Public Participation Office is responsible for receiving public complaints concerning facility compliance. (See Attachment 4). Each complaint is assigned a "complaint number" and is referred to EQB inspectors in the Bureau's Surveillance Inspection Section who verify the accuracy of the complaint. The inspectors then send a memorandum to the director of the Bureau advising whether enforcement action should be commenced against the facility. The director then evaluates the sufficiency of the evidence and may choose to pursue one of three enforcement options, with the assistance of enforcement attorneys from EQB's Legal Division: 1) issue an order to "cease and desist," mandating that the facility terminate the violative conduct; 2) issue a "show cause" order, requiring the facility to demonstrate why further enforcement action should not be taken; or 3) issue an order "to do," requiring the facility to remedy the violative conduct. See PPEA § 11(22). The complaining party is informed of the status of the complaint and is advised as to whether enforcement action will be taken.

⁹ These forms have been adopted from the analogous EPA forms 9110-1 and 9110-2.

4.6 Enforcement Authority § 239.8

4.6.1 Restraining Activities That May Endanger Human Health or the Environment § 239.8(a)

PPEA § 11(22),(30) and Rule 210 of the Regulations provide EQB with the authority to restrain immediately and effectively any person, by administrative or court order, or by suit in a court of competent jurisdiction, from engaging in any activity, including violations of Puerto Rico's program requirements, which may endanger or cause damage to human health or the environment. Section 11(22) authorizes EQB to issue "to do," "not to do," and "cease and desist" orders necessary to "achieve the purposes of this title, and of the regulations hereunder promulgated." See also Rule 209 (EQB may issue "to do" orders without having issued a notice of deficiency). Such orders can effectively and immediately restrain any conduct that endangers human health or the environment. Pursuant to PPEA § 11(30), EQB may enforce these orders through the Courts of Puerto Rico or of the United States of America. In addition, Rule 210 of the Regulations authorizes EQB to order the "immediate closure" of a non-hazardous solid waste facility if "necessary to protect public health or the environment . . ." See also The Environmental Emergency Fund Act of Puerto Rico, Act No. 81 of July 2, 1987, (12 LPRA § 1271, et seq. (1989 Supp.) (Attachment 11).

4.6.2 Enjoining Activities That May Violate Puerto Rico's Program § 239.8(b)

PPEA § 11(30) provides EQB with the authority to sue in a court of competent jurisdiction to enjoin any threatened or continuing activity which violates any statute, regulation, order, or permit which is part of, or issued pursuant to, Puerto Rico's program. As discussed above, EQB is authorized to issue "to do" and "not to do" orders. Such orders may not be stayed unless so directed by the Superior Court of Puerto Rico or by the Board itself. Section 11(22). PPEA § 11(30) enables EQB to enforce such orders in the Courts of Puerto Rico or of the United States of America. See also PPEA § 11(16) (authorizing EQB "to order the persons causing or contributing to a condition of damage to the environment and natural resources or of being imminently dangerous to public health and safety to immediately reduce or discontinue their activities"). EQB may revoke any permit issued under the Regulation under the conditions established at Rule 1010(4).

4.6.3 Recovering Administrative and Civil Fines for Violation of Puerto Rico's Program § 239.8(c)

PPEA § 16 and Rule 211 of the Regulations provide EQB with the authority to impose administrative fines¹⁰ for violations of a statute or regulation that is part of Puerto Rico's

¹⁰ EQB's authority to impose administrative fines is functionally equivalent to the authority to assess or sue in court to recover civil penalties as required by proposed 40 C.F.R. § 239.8(c).

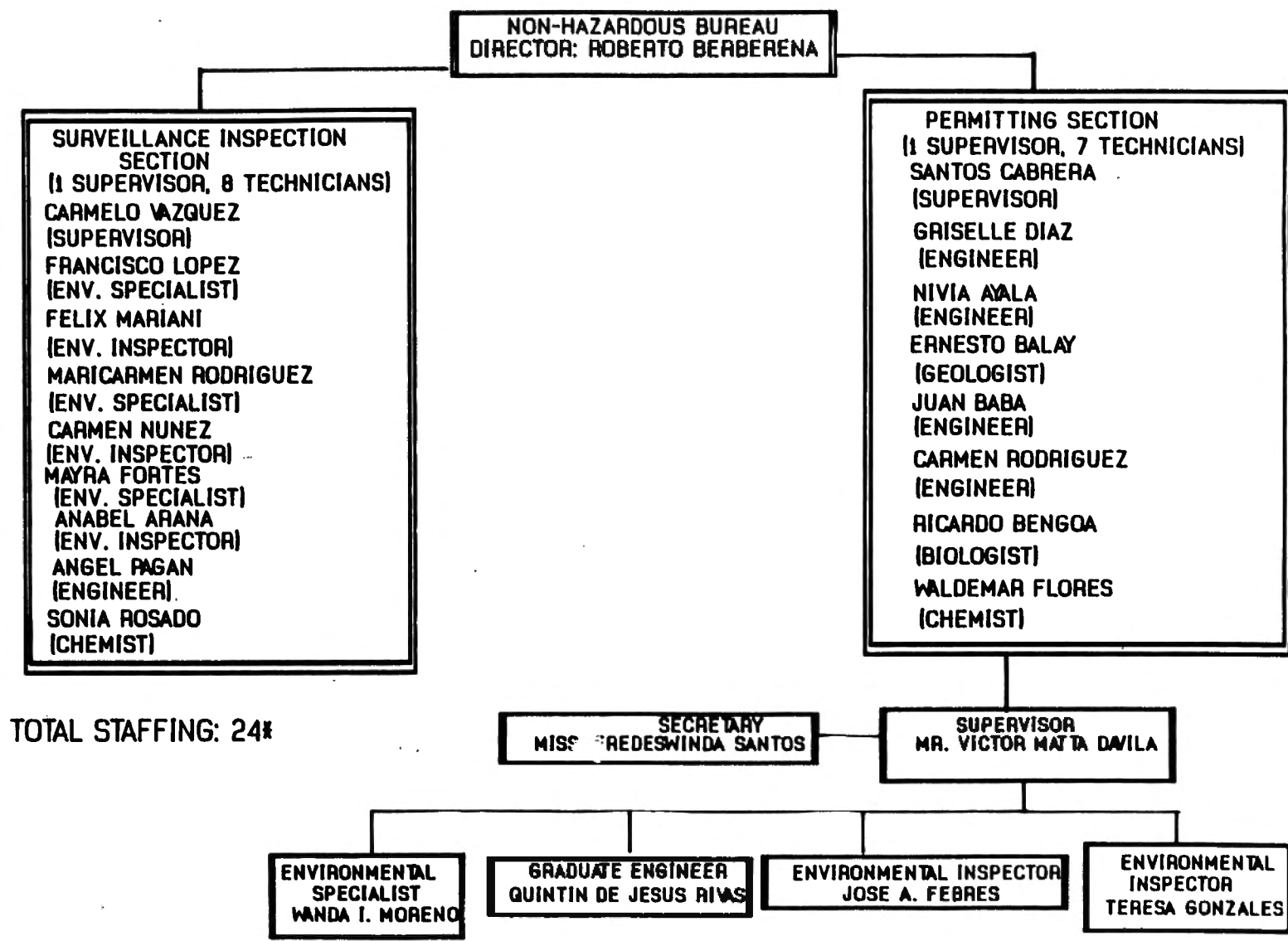
program or of an order or permit that is issued pursuant to the program. Additionally, PPEA § 11(30) provides EQB with the authority to pursue civil actions in the Courts of Puerto Rico or of the United States of America to request the execution of any remedy pursued by EQB. PPEA § 16(c) authorizes the EQB to impose administrative penalties of not more than \$25,000 for each violation of the PPEA or its regulations.¹¹ Each day of violation constitutes a separate violation. In addition, Section 16(a) specifically makes any violation of the rules and regulations promulgated under the PPEA a misdemeanor, subject to a court-ordered fine. Rule 211 of the Regulation essentially incorporates into the Regulation the relevant portions of PPEA § 16.

¹¹ Upon an EQB finding of contempt in connection with or recurrence of the acts for which an administrative fine has already been imposed, EQB may exercise its discretion to impose an additional administrative fine of up to \$ 50,000. PPEA § 1136(d).

4.7 Intervention Authority § 239.9

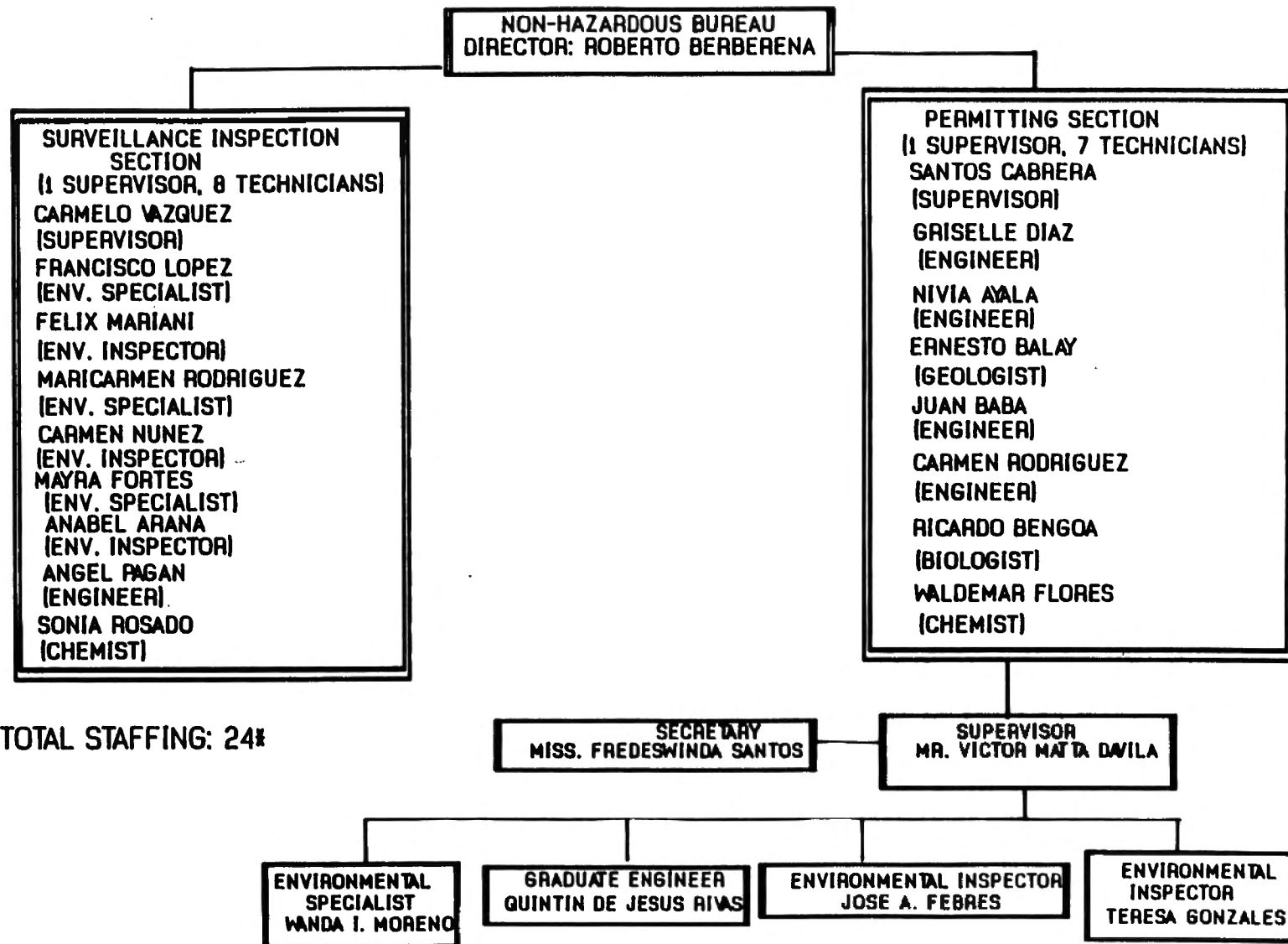
Rule 21.1 of the Puerto Rico Rules of Civil Procedure authorizes intervention as a right in the civil enforcement process by any citizen having an interest that is or may be adversely affected by civil enforcement action.¹² (Attachment 12). Rule 213 of the Regulation preserves this right of intervention under the program by stating that "[n]othing in this Regulation shall be construed as limiting in any manner legal actions that could be brought by citizens, as authorized by law."

¹² See *R. Mix Concret v. R. Arellano & Co.*, 110 D.P.R. 869.

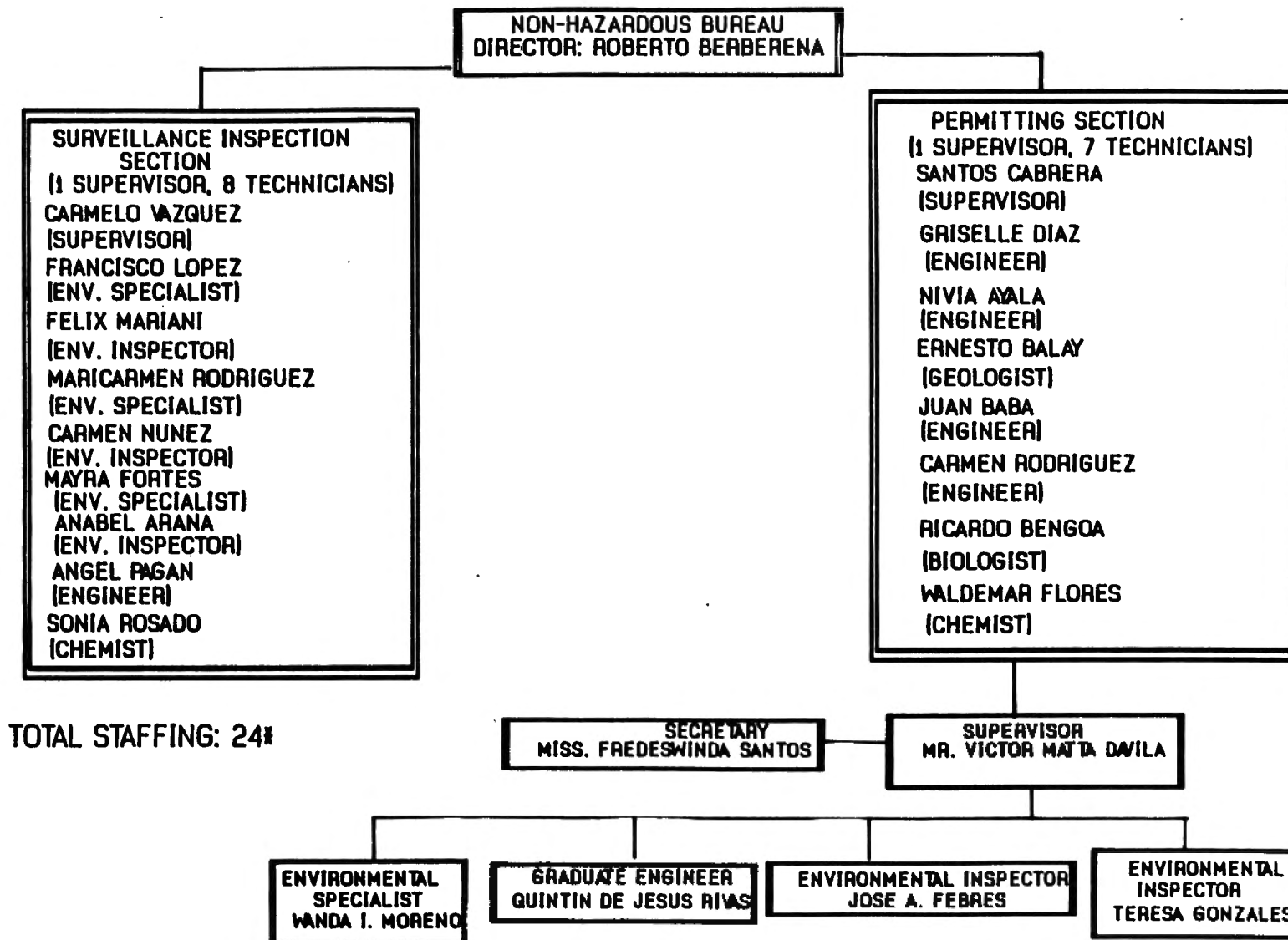


TOTAL STAFFING: 24*

* IN ADDITION THERE ARE FOUR(4) ATTORNEY'S FOR ENFORCEMENT ACTIONS



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